

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ARNOLD KUERBITZ,

Plaintiff,

v.

ANDREW E. MEISNER, et al.,

Defendants.

Case No. 16-12736
Hon. Terrence G. Berg

**OPINION AND ORDER
GRANTING PLAINTIFF’S APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF FEES OR COSTS ON
APPEAL (DKT. 53) AND DENYING PLAINTIFF’S
APPLICATION/MOTION FOR CERTIFICATION OF
APPEALABILITY (DKT. 54)**

Pending before the Court is Plaintiff’s application to proceed without prepaying fees or costs on appeal. Dkt. 53. Federal Rule of Appellate Procedure 24(a)(1) provides that a party to a district court action who desires to appeal *in forma pauperis* must file a motion in the district court. Fed. R. App. P. 24(a)(1). An appeal may not be taken *in forma pauperis* if the court determines that it is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A). “[T]o determine if an appeal is in good faith, a court need only find that a reasonable person could suppose that the appeal has some merit.” *Walker v. O’Brien*, 216 F.3d 626, 631 (7th Cir. 2000).

Examination of Plaintiff's application to proceed *in forma pauperis* reveals that Plaintiff is unable to afford the costs of an appeal. See Dkt. 53. Furthermore, the Court finds that an appeal may be taken in this matter in good faith. Accordingly, Plaintiff's application to proceed *in forma pauperis* on appeal is **GRANTED**.¹

Plaintiff also filed with this Court an Application/Motion for Certificate of Appealability, citing Federal Rules of Appellate Procedure 4(a)(1)(b) and 22(b). Dkt. 54. However, Rule 22(b)—which governs habeas corpus proceedings—does not apply in this case. See Fed. R. App. P. 22(b). The applicable Federal Rules do not require Plaintiff to obtain a Certificate of Appealability to appeal in this matter. Plaintiff's Motion is therefore **DENIED**.

SO ORDERED.

Dated: December 12, 2017 s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

¹ The Court notes that Federal Rule of Appellate Procedure 24(a)(3) also allows Petitioner to proceed *in forma pauperis* on appeal in this matter. Rule 24(a)(3) provides that a party who was permitted to proceed *in forma pauperis* in its district-court action may proceed on appeal *in forma pauperis* without further authorization. Fed. R. App. P. 24(a)(3). The exceptions to Rule 24(a)(3) do not apply in this case. See *id.* at 24(a)(3)(A)-(B). This Court permitted Plaintiff to proceed *in forma pauperis* in his district-court action. See Dkt. 5. Thus, Plaintiff may proceed accordingly on appeal.

Certificate of Service

I hereby certify that this Order was electronically filed, and the parties and/or counsel of record were served on December 12, 2017.

s/A. Chubb

Case Manager